

ASSEMBLY BILL

No. 1198

Introduced by Assembly Member Dutton

February 21, 2003

An act to amend Sections 1043 and 1047 of the Evidence Code, and to amend Sections 832.7 and 832.8 of the Penal Code, relating to peace officers.

LEGISLATIVE COUNSEL'S DIGEST

AB 1198, as introduced, Dutton. Peace officers: records.

Existing law provides that when discovery or disclosure is sought of peace or custodial officer personnel records or information from those records, the party seeking the discovery or disclosure shall file a written motion with the appropriate court or administrative body upon written notice to the governmental agency which has custody and control of the records, and that upon receipt of the notice the governmental agency served shall immediately notify the individual whose records are sought.

This bill would in addition provide that if the governmental agency is not the employer of the individual, the governmental agency shall immediately notify the last known peace officer or custodial officer employer of the individual when direct notification is not possible and the individual's location is unknown.

By imposing additional duties on local governmental agencies in connection with peace officer personnel records this bill would impose a state-mandated local program.

Existing law provides that, subject to exceptions, peace officer and custodial officer personnel records and information obtained from these records, are confidential and shall not be disclosed in any criminal or

civil proceeding except by discovery pursuant to other provisions of law.

This bill would extend these provisions to apply to state and local agency employers of peace officers and custodial officers and other governmental agencies authorized to use and maintain those records and information to assess compliance with regulatory selection and training requirements.

Existing law defines “personnel records” for these described purposes relative to peace officers and custodial officers, and their employing agencies.

This bill would extend the definition to include records and other specified information relative to former peace officers and former custodial officers and to include other governmental agencies authorized to maintain these records.

By imposing additional duties on local governmental agencies in connection with peace officer personnel records this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1043 of the Evidence Code is amended
- 2 to read:
- 3 1043. (a) In any case in which discovery or disclosure is
- 4 sought of peace or custodial officer personnel records or records
- 5 maintained pursuant to Section 832.5 of the Penal Code or
- 6 information from those records, the party seeking the discovery or
- 7 disclosure shall file a written motion with the appropriate court or



1 administrative body upon written notice to the governmental
2 agency which has custody and control of the records. The written
3 notice shall be given at the times prescribed by subdivision (b) of
4 Section 1005 of the Code of Civil Procedure. Upon receipt of the
5 notice the governmental agency served shall immediately notify
6 the individual whose records are sought. *If the governmental*
7 *agency is not the employer of the individual, the governmental*
8 *agency shall immediately notify the last known peace officer or*
9 *custodial officer employer of the individual when direct*
10 *notification is not possible and the individual's location is*
11 *unknown.*

12 (b) The motion shall include all of the following:

13 (1) Identification of the proceeding in which discovery or
14 disclosure is sought, the party seeking discovery or disclosure, the
15 peace or custodial officer whose records are sought, the
16 governmental agency which has custody and control of the
17 records, and the time and place at which the motion for discovery
18 or disclosure shall be heard.

19 (2) A description of the type of records or information sought.

20 (3) Affidavits showing good cause for the discovery or
21 disclosure sought, setting forth the materiality thereof to the
22 subject matter involved in the pending litigation and stating upon
23 reasonable belief that the governmental agency identified has the
24 records or information from the records.

25 (c) No hearing upon a motion for discovery or disclosure shall
26 be held without full compliance with the notice provisions of this
27 section except upon a showing by the moving party of good cause
28 for noncompliance, or upon a waiver of the hearing by the
29 governmental agency identified as having the records.

30 SEC. 2. Section 1047 of the Evidence Code is amended to
31 read:

32 1047. Records *maintained by the employing agency or any*
33 *other governmental agency* of peace officers or custodial officers,
34 as defined in Section 831.5 of the Penal Code, including
35 supervisory officers, who either were not present during the
36 arrest or had no contact with the party seeking disclosure from the
37 time of the arrest until the time of booking, or who were not present
38 at the time the conduct is alleged to have occurred within a jail
39 facility, shall not be subject to disclosure.

40 SEC. 3. Section 832.7 of the Penal Code is amended to read:

1 832.7. (a) Peace officer or custodial officer personnel
2 records and records maintained by any state or local agency
3 pursuant to Section 832.5, or information obtained from these
4 records, are confidential and shall not be disclosed in any criminal
5 or civil proceeding except by discovery pursuant to Sections 1043
6 and 1046 of the Evidence Code. *This section applies to state and*
7 *local agency employers of peace officers and custodial officers*
8 *and other governmental agencies authorized to use and maintain*
9 *this information to assess compliance with regulatory selection*
10 *and training requirements.* This section shall not apply to
11 investigations or proceedings concerning the conduct of police
12 officers or a police agency conducted by a grand jury, a district
13 attorney's office, or the Attorney General's office.

14 (b) Notwithstanding subdivision (a), a department or agency
15 shall release to the complaining party a copy of his or her own
16 statements at the time the complaint is filed.

17 (c) Notwithstanding subdivision (a), a department or agency
18 which employs peace or custodial officers may disseminate data
19 regarding the number, type, or disposition of complaints
20 (sustained, not sustained, exonerated, or unfounded) made against
21 its officers if that information is in a form which does not identify
22 the individuals involved.

23 (d) Notwithstanding subdivision (a), a department or agency
24 which employs peace or custodial officers may release factual
25 information concerning a disciplinary investigation if the officer
26 who is the subject of the disciplinary investigation, or the officer's
27 agent or representative, publicly makes a statement he or she
28 knows to be false concerning the investigation or the imposition
29 of disciplinary action. Information may not be disclosed by the
30 peace or custodial officer's employer unless the false statement
31 was published by an established medium of communication, such
32 as television, radio, or a newspaper. Disclosure of factual
33 information by the employing agency pursuant to this subdivision
34 is limited to facts contained in the officer's personnel file
35 concerning the disciplinary investigation or imposition of
36 disciplinary action that specifically refute the false statements
37 made public by the peace or custodial officer or his or her agent or
38 representative.



(e) The department or agency shall provide written notification to the complaining party of the disposition of the complaint within 30 days of the disposition.

The notification described in this subdivision shall not be conclusive or binding or admissible as evidence in any separate or subsequent action or proceeding brought before an arbitrator, court, or judge of this state or the United States.

(f) Nothing in this section shall affect the discovery or disclosure of information contained in a peace or custodial officer's personnel file pursuant to Section 1043 of the Evidence Code.

SEC. 4. Section 832.8 of the Penal Code is amended to read:

832.8. As used in Section 832.7, "personnel records" means any ~~file~~ *peace officer, former peace officer, custodial officer, or former custodial officer record* maintained under that individual's name by his or her employing agency, *or maintained by any other authorized governmental agency*, and containing records relating to any of the following:

(a) Personal data, including, *but not limited to*, marital status, family members, ~~educational~~ *education, training, professional certificates*, and employment history, home addresses, or similar information.

(b) Medical history.

(c) Election of employee benefits.

(d) Employee advancement, appraisal, or discipline.

(e) Complaints, or investigations of complaints, concerning an event or transaction in which he or she participated, or which he or she perceived, and pertaining to the manner in which he or she performed his or her duties.

(f) Any other information the disclosure of which would constitute an unwarranted invasion of personal privacy.

SEC. 5. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000),

- 1 reimbursement shall be made from the State Mandates Claims
- 2 Fund.

O

